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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/954,464 | 09/14/2001 | Kenneth F. Gay | GAY 2-009-3 | 8908 |
| 7590 | 03/12/2004 | | EXAMINER | |
| Gerald L. Smith Mueller and Smith, LPA 7700 Rivers Edge Drive Columbus, OH 43235 | | | TRAN, KHOA H | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3634 | |

DATE MAILED: 03/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/954,464 | GAY ET AL. |
| | Examiner | Art Unit |
| | Khoa Tran | 3634 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9, 11-23, 25-30, 32-36 and 42-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9, 11-23, 25-30, 32-36 and 42-50 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 July 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

The indicated allowability of claims 4, 20, and 36 are withdrawn in view of the discovered reference of Butcher et al. Rejections based on the newly cited reference are advanced below.

Drawings

Applicants' explanation to the drawing objection in Paper No. 7 is found to be persuasive and therefore the objection has been withdrawn.

The proposed drawings correction and/or the proposed substitute sheets of drawings, filed on July 14, 2003 have been approved.

Claim Objections

Claim 5 is objected to because the extra period at the end of the claim should be deleted. On page 5 of the amendment, "Claim3" should be --Claim 3-- and "Claim4" should be --Claim 4--. Claims 11, 25, and 32 are objected to because they depend from canceled claims. For this office action only, claim 11 is considered to depend from claim 1, claim 25 is considered to depend from claim 13, and claim 32 is considered to depend from claim 27. Claim 42, line 8, "one of said vertical support" is not grammatically correct. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-9, 11-23, 25-30, 32-36, and 42-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 1, 13, 27, 42, and 48-50, it is not understood what applicants attempt to define with the phrases "fixed to oppositely disposed portions of said rod beam" and "fixed to oppositely disposed portions of said load transfer rod". In particular, do applicants intend to set forth the forming rods in a different plane than the plane that contains the rod beam or load transfer rod? Claim 5 is incomplete or misdescriptive because it's unclear which of the rods are considered to be the four rods that form parallelogram loops. With respect to claims 9, 23, 48, and 49, the positive inclusion of vertical supports raise the question of whether the combination or subcombination is being claimed because the preamble implies only the subcombination is being claimed. With respect to claims 11, 25, and 32, there is no antecedent basis for "said display support", "said first channel assembly", and "said pivot connector". With respect to claim 45, there is no antecedent basis for "said two forward wall forming rods".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffington et al. in view of Merl and Trulaske, Sr. Buffington et al. disclose an open frame display shelf assembly for connection between vertical supports spaced apart a bay width comprising at least three spaced apart elongated base rods (32) extending substantially coextensive with the bay width. An array of rod beams (30) fixed in transverse relationship to the base rods and positioned in parallel spaced relationship of a selected distance to provide an open frame surface, the rod beams are extended between a shelf forward region and a shelf rearward region and extended substantially along the bay width between first and second shelf side regions. See Figure 1. The rod beams having forward extensions arranged normal to the open frame surface and extend a forward wall height at the shelf forward region and the rod beams having rearward extensions arranged normal to the open frame surface and extend a rearward wall height at the shelf rearward region, a plurality of first sidewall forming rods (46, 48) arranged parallel with rod beams (30) and extend at a height normal to the open frame surface, wherein a first receptor gap is defined between the sidewall forming rods (46 and 48), a plurality of second sidewall forming rods (46, 48) arranged parallel with rod beams (30) and extend at a height normal to the open frame surface, wherein a second receptor gap is defined between the sidewall forming rods (46 and 48). Buffington et al. do not teach sidewalls having load transfer rods in connection with rod beams. However, Merl teaches sidewalls having load transfer rods (44 and 49) in connection with rod beams (14), see Figure 1. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the sidewalls of Buffington et al.

to have load transfer rods in connection with rod beams as taught by Merl in order to have removable sidewalls that are adjustable to accommodate various widths between two support posts. Buffington et al. forward wall and rearward wall extensions do not have a plurality of elongated wall forming rods arranged in parallel in relationship with the base rods. However, Trulaske, Sr. teaches an open frame display shelf having a forward wall extension (36, 44, and 48) and a rearward wall extension (38, 46, and 48) each wall extension comprises of a plurality of elongated wall forming rods arranged in parallel in relationship with the base rods, see Figure 3, wherein a receptor gap is formed between an upper rod (48) and a lower rod (44) and an adjacent rod (36, 38). At the time of the invention was made, one of ordinary skill in the art would have been further motivated to modify the forward and rearward walls of Buffington et al. with the provision of elongated wall forming rods as taught by Trulaske, Sr. in order take play in restraining the objects on the shelf and preventing them from falling off. Further, an open wire shelf having sidewalls that comprise of elongated wall forming rods arranged in space apart and parallel with the base rods is common and well known in the art and it is well it is well-within the level of skill in the art to utilize the known features of the art for the purpose for which they are known.

Claims 2-4 and 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffington et al. in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 above, and further in view of Garfinkle ('707). Garfinkle ('707) teaches a display support comprising a generally planar sign engaging surface (11A, 11B) and at least two couplers (22 and 50) connected between the sign engaging surface and a shelf forward

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wall engagement surface. The coupler (50) permits altering the slope of the sign, see Figure 3, and it's configured to have sequence of notches (20A) disposed rearwardly on a semi-circular periphery (20). The coupler (50) has a central disposed opening extends therethrough and a flexible strap retainer (22) for retainable against the shelf forward wall engagement surface. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified open shelf of Buffington et al. in view of Merl and Trulaske, Sr. with the provision of a rotatable sign as taught by Garfinkle ('707) in order have a display sign that is capable to display a sign in a substantially vertical orientation and allow rotation about the connector in a substantially vertical orientation for the purpose of bringing attention to the specified item offered for sale.

Claims 2-4 and 42-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffington et al. in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 above, and further in view of Butcher et al. Butcher et al. teach a display support (10) comprising a generally planar sign engaging surface (36) having two oppositely disposed channels and at least two couplers (12 and 14) connected between the sign engaging surface and a shelf forward wall engagement surface, see Figure 1. The coupler (12) permits altering the slope of the sign, see Figures 3 and 4, and it's configured to have sequence of notches (30) disposed rearwardly on a semi-circular periphery (16). The coupler (12) has a central disposed opening extends therethrough and a flexible strap retainer (40) that is retainable against the shelf forward wall engagement surface. See Figures 1-3. It would have been obvious to one of ordinary

skill in the art at the time of the invention was made to provide the modified open shelf Buffington et al. in view of Merl and Trulaske, Sr. with the provision of a rotatable sign as taught by Butcher et al. in order have a swing up and down display sign support to improves viewing position of the display information for the products display on the shelf.

Claims 5, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffington et al. in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 above, and further in view of R. G. Chesley. Chesley teaches sidewall forming rods configured as a parallelogram loop (128) and includes a general D-shape merchandise retaining loop having spaced apart legs (130) and downwardly opposite disposed legs (100 and 102) for inserting between a gap. See Figures 6 and 7. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified open shelf of Buffington et al. in view of Merl and Trulaske, Sr. with the provision of parallelogram loop wall forming rods as taught by Chesley in order to have detachable sidewall that is removably mounted on the shelf to form separators or to form end walls.

Claims 9 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffington et al. in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 above, and further in view of Loew. Loew teaches a pivot sign support assembly attachable to a forward region of a shelf having a length and a display width that effective to contact a forward region of a mutually adjacent lower shelf assembly. See Figure 1A. The pivot sign support comprises a flat visual display support (12) having a width dimension

corresponds to the display width. The display support extends between an upper edge and a lower edge and configured of first and second channel assemblies (14d and 14b), that extend along the given length, see Figures 3 and 4. The pivot sign support assembly further has a pivot connector (20) extends from the display support upper edge and includes a pivot hook (108). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified open shelf of Buffington et al. in view of Merl and Trulaske, Sr. with the provision a pivot sign support assembly as taught by Loew in order to have a sign assembly that is able to cover a storage space for the purpose of obstructing a view of contents in the storage space.

Claim 11, as best as understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Buffington et al. in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 above, and further in view of Howard et al. Howard et al. teach a display support (14), see Figure 1, having dual channels of a first channel (40) at a front face, a rearward channel (42) at a rear face, a channel engaging member (34, 36) spaced from the rearward channel, and a pivot connector that has a connector channel (82) and stabilizer tab or leg, see Figure 7. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified open shelf of Buffington et al. in view of Merl and Trulaske, Sr. with the provision of a display support as taught by Howard et al. in order to have a display support that enables to display information at the front of the support for a consumer viewing and display information at the rear of the support for store personnel to reorder of merchandises.

Claims 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffington et al. in view of Merl and Truslaske, Sr. as applied to claims 1 and 6 above, and further in view of Sainato. Sainato teaches an overhead sign assembly comprising a flat overhead visual display support (24) having a sign (12) that extends between upper and lower edges (60) and a length corresponds to the bay width of the shelf (14). See Figures 1 and 2. The overhead sign of Sainato also has first and second stanchions (32) connected to respective first and second overhead bracket assemblies (64) so that to allow the overhead visual display support to be tilted at a given angle. See Figure 2. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the modified open shelf of Buffington et al. in view of Merl and Trulaske, Sr. with the provision of an overhead sign assembly as taught by Sainato in order to provide sale information or advertise the products being displayed on the shelf without sacrificing the space needed for the products store on the shelf.

Claims 42-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffington et al. in view of Butcher et al. Buffington et al. disclose a display shelf assembly comprising a base region (32) extending substantially coextensive with a bay width and between a shelf forward region (26) and a shelf rearward region (28), see Figure 1, a forward wall extending from the shelf forward region formed of two mutually parallel forward wall forming rods that substantially parallel with the base region, see Figure 7, and first and second brackets (72) support the base region at a predetermined angle and connectable to respective first and second vertical supports (12). See Figures 2-4. Butcher et al. teach a display support (10) comprising a generally planar

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sign engaging surface (36) having two oppositely disposed channels and at least two couplers (12 and 14) connected between the sign engaging surface and a shelf forward wall engagement surface, see Figure 1. The coupler (12) permits altering the slope of the sign, see Figures 3 and 4, and it's configured to have sequence of notches (30) disposed rearwardly on a semi-circular periphery (16). The coupler (12) has a central disposed opening extends therethrough and a flexible strap retainer (40) that is retainable against the shelf forward wall engagement surface. See Figures 1-3 It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the open shelf of Buffington et al. with the provision of a rotatable sign as taught by Butcher et al. in order have a swing up and down display sign support to improves viewing position of the display information for the products display on the shelf.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,302,282 in view of Buffington et al., Merl and Truslaske, Sr. The U.S. Patent No. 6,302,282 discloses all limitations of a pivotable bracket assembly as claimed in claimed 13-17. However, the U.S. Patent No. 6,302,282 does not teach the bracket assembly useable with an open frame display shelf. However, Buffington et al. teach an open frame display shelf usable with a bracket assembly for connection with vertical supports. The open frame display shelf of Buffington et al. comprises at least three spaced apart elongated base rods (32) extending substantially coextensive with the bay width. An array of rod beams (30) fixed in transverse relationship to the base rods and positioned in parallel spaced relationship of a selected distance to provide an open frame surface, the rod beams are extended between a shelf forward region and a shelf rearward region and extended substantially along the bay width between first and second shelf side regions. See Figure 1. The rod beams having forward extensions arranged normal to the open frame surface and extend a forward wall height at the shelf forward region and the rod beams having rearward extensions arranged normal to the open frame surface and extend a rearward wall height at the shelf rearward region, a plurality of first sidewall forming rods (46, 48) arranged parallel with rod beams (30) and extend at a height normal to the open frame surface, wherein a first receptor gap is defined between the sidewall forming rods (46 and 48), a plurality of second sidewall forming rods (46, 48) arranged parallel with rod beams (30) and extend at a height normal to the open frame surface, wherein a second receptor gap is defined between the sidewall

forming rods (46 and 48). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the U.S. Patent No. 6,302,282 with the provision of an open frame display shelf as taught by Buffington et al. in order to have a shelf to support items thereon. Buffington et al. do not teach sidewalls having load transfer rods in connection with rod beams. However, Merl teaches sidewalls having load transfer rods (44 and 49) in connection with rod beams (14), see Figure 1. At the time of the invention was made, one of ordinary skill in the art would have been further motivated to modify the sidewalls of Buffington et al. to have load transfer rods in connection with rod beams as taught by Merl in order to have removable sidewalls that are adjustable to accommodate various widths between two support posts. Buffington et al. forward wall and rearward wall extensions do not have a plurality of elongated wall forming rods arranged in parallel in relationship with the base rods. However, Trulaske, Sr. teaches an open frame display shelf having a forward wall extension (36, 44, and 48) and a rearward wall extension (38, 46, and 48) each wall extension comprises of a plurality of elongated wall forming rods arranged in parallel in relationship with the base rods, see Figure 3, wherein a receptor gap is formed between an upper rod (48) and a lower rod (44) and an adjacent rod (36, 38). At the time of the invention was made, one of ordinary skill in the art would have been further motivated to modify the forward and rearward walls of Buffington et al. with the provision of elongated wall forming rods as taught by Trulaske, Sr. in order take play in restraining the objects on the shelf and preventing them from falling off. Further, an open wire shelf having sidewalls that comprise of elongated wall forming rods arranged in space apart and parallel with the

base rods is common and well known in the art and it is well it is well-within the level of skill in the art to utilize the known features of the art for the purpose for which they are known.

Claims 18-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,302,282 in view of Buffington et al., Merl and Trulaske, Sr. as applied to claims 13-17 above, and further in view of Butcher et al. Butcher et al. teach a display support (10) comprising a generally planar sign engaging surface (36) having two oppositely disposed channels and at least two couplers (12 and 14) connected between the sign engaging surface and a shelf forward wall engagement surface, see Figure 1. The coupler (12) permits altering the slope of the sign, see Figures 3 and 4, and it's configured to have sequence of notches (30) disposed rearwardly on a semi-circular periphery (16). The coupler (12) has a central disposed opening extends therethrough and a flexible strap retainer (40) that is retainable against the shelf forward wall engagement surface. See Figures 1-3. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the open shelf of U.S. Patent No. 6,302,282 in view of Buffington et al., Merl and Truslaske, Sr. with the provision of a rotatable sign as taught by Butcher et al. in order have a swing up and down display sign support to improves viewing position of the display information for the products display on the shelf.

Claims 21 and 22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S.

Patent No. 6,302,282 in view of Buffington et al., Merl and Trulaske, Sr. as applied to claims 13-17 above, and further in view of R. G. Chesley. Chesley teaches sidewall forming rods configured as a parallelogram loop (128) and includes a general D-shape merchandise retaining loop having spaced apart legs (130) and downwardly opposite disposed legs (100 and 102) for inserting between a gap. See Figures 6 and 7. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the open shelf of U.S. Patent No. 6,302,282 in view of Buffington et al., Merl and Trulaske, Sr. with the provision of parallelogram loop wall forming rods as taught by Chesley in order to have detachable sidewall that is removably mounted on the shelf to form separators or to form end walls.

Claims 23 and 49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,302,282 in view of Buffington et al., Merl and Trulaske, Sr. as applied to claims 13-17 above, and further in view of Loew. Loew teaches a pivot sign support assembly attachable to a forward region of a shelf having a length and a display width that effective to contact a forward region of a mutually adjacent lower shelf assembly. See Figure 1A. The pivot sign support comprises a flat visual display support (12) having a width dimension corresponds to the display width. The display support extends between an upper edge and a lower edge and configured of first and second channel assemblies (14d and 14b), that extend along the given length, see Figures 3 and 4. The pivot sign support assembly further has a pivot connector (20) extends from the display support upper edge and includes a pivot hook (108). It would have been

obvious to one of ordinary skill in the art at the time of the invention was made to provide the open shelf of U.S. Patent No. 6,302,282 in view of Buffington et al., Merl and Trulaske, Sr. with the provision a pivot sign support assembly as taught by Loew in order to have a sign assembly that is able to cover a storage space for the purpose of obstructing a view of contents in the storage space.

Claim 25 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,302,282 in view of Buffington et al., Merl and Trulaske, Sr. as applied to claims 13-17 above, and further in view of Howard et al. Howard et al. teach a display support (14), see Figure 1, having dual channels of a first channel (40) at a front face, a rearward channel (42) at a rear face, a channel engaging member (34, 36) spaced from the rearward channel, and a pivot connector that has a connector channel (82) and stabilizer tab or leg, see Figure 7. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the open shelf of U.S. Patent No. 6,302,282 in view of Buffington et al., Merl and Trulaske, Sr. with the provision of a display support as taught by Howard et al. in order to have a display support that enables to display information at the front of the support for a consumer viewing and display information at the rear of the support for store personnel to reorder of merchandises.

Claim 26 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,302,282 in view of Buffington et al., Merl and Truslaske, Sr. as applied to claims 13-17 above, and further in view of Sainato. Sainato teaches an overhead sign assembly comprising a

flat overhead visual display support (24) having a sign (12) that extends between upper and lower edges (60) and a length corresponds to the bay width of the shelf (14). See Figures 1 and 2. The overhead sign of Sainato also has first and second stanchions (32) connected to respective first and second overhead bracket assemblies (64) so that to allow the overhead visual display support to be tilted at a given angle. See Figure 2. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the open shelf of U.S. Patent No. 6,302,282 in view of Buffington et al., Merl and Truslaske, Sr. with the provision of an overhead sign assembly as taught by Sainato in order to provide sale information or advertise the products being displayed on the shelf without sacrificing the space needed for the products store on the shelf.

The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. Van Noord, J. M. Melvin et al., Wyatt et al., Simon, Kassanchuk, Belokin et al., and I. B. Young, Jr., are cited to show a wire display shelf that is similar to applicants' wire display shelf. Abramson et al., Garfinkle ('072) are cited to show a sign display support that is similar to applicants' sign display support and V. Reed et al., is cited to show a pivotal bracket that is similar to applicants' pivotal bracket.

Allowable Subject Matter

Claims 27-30, 32-36 and 50 are allowable.

Claims 27, 32, and 50 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 28-30 and 33-36 are objected to as being dependent upon a rejected base claim.

Response to Amendment

Applicants' arguments with respect to claims 1-9, 11-23, 25, 26, and 42-49 have been considered but are moot in view of the new grounds of rejection.

With respect to applicants' allegations of commercial success to support their contention of nonobviousness, it should be noted that the declaration for commercial success filed by applicants fail to establish a nexus between sales of the product and merits of claimed invention. In other words, what is being sold has not been structurally defined nor has it been established that what is being sold is the invention as claimed. Further, the mere naming of companies utilizing the shelving system does not evidence commercial success. In particular, what is the market share that these sales represent? What was the inventors' market share before the instant invention? On what basis is the instant invention being chosen? No evidence has been submitted to show sales figures or otherwise evidence that sales are attributable solely to the presence of some unique feature as opposed to other factors such as price, existing relationships, etc.

With respect to applicants' argument regarding the Double Patenting rejection being improper because the instant application is the result of a restriction requirement in the parent patent application and 35 U.S.C 121 prohibits the use of applicants' issued patent on a divisional application filed before the patent issuance which results from a restriction requirement. This argument is not found to be persuasive because a clear line of demarcation must be maintained. The instant application fails to maintain a

proper and clear line of demarcation between the previously patented (and restricted) subcombination and the now claimed combination. In particular, applicants' attention is directed to the fact that the scope of the subcombination in both the patent and the combination of instant claims 13 and 49 are the same such that no distinction would exist for restriction purposes if they were present in the same application and thus no restriction would be proper. In order for applicant to properly rely upon the prior restriction, the scope of the bracket subcombination would have to be broader in the instantly claimed combination than as patented in the issued subcombination claims.

See MPEP 806.05.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group before a final Office action is (703) 872-9306 and after a final Office action is (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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